IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.285 OF 2000.

The New India Assurance Co.Ltd. : Appellants.

versus

Shri Baburao Laxman Palkar &

ors. : Respondents.

Mr.D.R.Mahadik i/by S.R.Singh for the appellants.

None for the respondents.

CORAM : D.G.DESHPANDE,J.

DATED : 13th APRIL 2005.

ORAL ORDER

1. Heard advocate for the appellant/Insurance Company. Son of the respondent/claimant died in the accident. He filed claim petition. It was allowed to the extent of 50% including no fault liability. The Insurance Company/appellant did not adduce any evidence in support of their case. The entire

case is based on one so called admission given by the father/respondent in his cross examination. The admission is to the effect that the truck had soap loaded in various boxed. From this, the Insurance Company/appellant wants to contend that if there were other boxes, then the driver of the truck could not have taken other goods for carriage. He also contended that deceased Anand and his father were the passengers and were not accompanying the baggage. All these submissions are without any evidence from the side of the Insurance Company/Appellant. The father has specifically, on oath, stated that he had two baggage i.e. two bundles - head loads of cashew 25 kg. of each i.e. one for himself and one for his son who was 10 years of old at that time. From the evidence is clear that the respodent/claimant and his son were travelling in the truck as the person accompanying baggage. No other evidence was adduced to rebut or dispute the contentions of the claimants. Therefore, there is no substance in this appeal. It is dismissed. No order as to costs.

[D.G.DESHPANDE]

13/04/2005 JUDGE.